IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1625 OF 1982

1.The State Industrial and Investments Corporation of Maharashtra Limited, a Corporation registered under the Companies Act, 1956 and having its registered office at "Nirmal" Nariman Point, Bombay 400 021.

2. Bank of Baroda, a body corporate duly constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and having its head office at Mandvi, Baroda and one of their branch offices at Opera House, Bombay 400 004.

Versus

Puran Singh Sahani of Bombay Indian Inhabitant, the sole proprietor of Messers Puranson Industries, carrying on business at 103-Sukhk Sagar, Hughes Road, Bombay 400 007. ... Defendant

Mr. Prakash Panjabi for Plaintiff.

None for Defendants.

CORAM : F.I. REBELLO,J.
DATED : 2ND SEPTEMBER, 2005

ORAL JUDGMENT

. Plaintiff has filed the present suit for recovery of a sum of Rs.3,27,797.62 along with interest thereon at the rate of 14.5% from the date of the suit till payment and or realisation with cost of the suit. It is the case of the Plaintiffs, that in or about April, 1970 at the request of defendant, Plaintiff agreed to give to defendant, a term loan of the aggregate sum of Rs.4,26,000/- on joint participation basis under the Capital Participation Scheme of Plaintiff No. 1. Plaintiff No. 1 agreed to participate in the said loan to be given to the defendant as the defendants factory was situated at Roha, District

Kolaba which was a backward area. The agreement was reduced into writing on 21st April, 1970. The agreement contained terms for repayment of the installments. Thereafter there was joint agreement of hypothecation dated 21st April, 1970 made between the Plaintiffs and the defendant whereby Defendant hypothecated and charged in favour of the Plaintiffs all the moveable machinery belonging to the defendant both present and future as security for the due repayment to the Plaintiffs. The agreement also contained Clause being Clause 5 providing that the defendant agrees that the balance due to the Plaintiffs on the said account at any time shall be payable to the Plaintiffs at at their offices at Bombay together with all future interest calculated in terms of the agreement. By letter dated 21.4.1970 defendant agreed and undertook to create an equitable mortgage of their fixed assets in favour of the Plaintiffs as soon as the lease is executed by the Maharashtra Industrial Development Corporation. Tripartite agreement dated 22nd September, 1971 was made between the Plaintiff and defendant Pursuant to and in consideration of the aforesaid agreement and securities, the Plaintiffs lent and advanced to the defendant diverse amounts. From 15th May, 1970 to 29th September, 1972 plaintiff lent and advanced to

the defendant from time to time diverse amounts aggregating to Rs.1,29,781/- towards their share of the said joint participation loan. Plaintiff No. 1 maintained an account of the defendant in the name of M/s. Puran Sons Industries. In that account, Plaintiff No. 1 has debited to the defendant all amounts lent and advanced by the Plaintiff No. 1 to the defendant and interest from time to time payable by the defendant to the Plaintiff No.1. Plaintiff No.1 has given credit to defendant for all amounts repaid by the defendant to Plaintiff No. 1. As on 31st December, 1981 the sum of Rs.3,06,134/- was due and payable by the defendant to Plaintiff No. 1 at the foot of the said account.

. Defendant thereafter desired to shift his factory fro the said MIDC Plot at Roha to Panvel, which did not qualify as an underdeveloped area. Plaintiff No. 2 by a letter dated 20thj August, 1973 informed Plaintiff No. 1 that the defendant desired to shift the machinery to Panvel where he acquired some land and thereafter to start production. By the letter dated 10th September, 1973 Plaintiffs informed Plaintiff No. 2 that in order to avoid hardship to the defendant and as a very special case, Plaintiff No. 2 agreed to the

shifting of the machinery and to continue the said loan facility in favour of the defendant against the security of hypothecation of the plant and machinery on the terms and conditions mentioned in the said letter. Various other obligations were set. As the defendants were in default, after adjusting the payments made, there is due and payable by the defendant to Plaintiff No. 1 sum of Rs.3,27,797.62 with interest at the rate of 14.5% from the date of the suit till payment and/or realisation. Consequently the suit is filed.

2. Written statement was field on behalf of the defendants. Various pleas have been raised including that the claim of the suit is hit by the rule of "Damdupat" inasmuch as the amount claimed by way of interest far exceeds the principal amount lent and advanced to the Defendant. It is further pointed out that the alleged bargain is unreasonable, unfair and unconscionable and against the Public Policy. It is pointed out that repayment of the of the loan as per agreement was to start from the fourth year from the date of disbursement of first instalment i.e. on or after 11th May, 1974. It is the contention of the defendant that the term loan was granted to the defendant for the object of setting up a small

scale industry which was being put up in a notified backward area. Plaintiff by demanding interest at the higher rate, frustrated the very object of the said scheme and/or set it at naught. In Para 10, defendant has denied the liability to pay interest and contended that what is payable is simple interest at the rate of 8% p.a. It is further contended that the amounts paid towards the principal could not have been appropriated by the Plaintiffs towards the interest amount. The defendant denied that the sum of Rs.3,06,134 was due and payable by the defendant to the Plaintiff No. 1 as alleged.

3. Issues were framed on 19.9.2003 which read are as under:

1. Whether the Plaintiffs prove that cause of action for filing the suit had arisen within the territorial jurisdiction of this Court?

2. Whether the Plaintiffs prove that a sum of Rs.3,27,797.62 ps. is due and payable by the defendant as per Exhibit "G" annexed to the plaint with further interest at the rate of 14.5% per annum?

3.Whether defendants prove that the claim in the suit is hit by the rule of Damdupat as per the para 3 of the Written statement?

4. Whether the defendants prove that the transactions between the parties is hit by provisions of Usurious Loan Act, 1918 as per Para 2 of the written statement?

5. Whether the Defendants prove that Plaintiff exercised coercion and undue influence while defendant was to be allowed to shift his industry?

6. Whether the defendants prove that they requested the Plaintiff No. 1 to adjust the sale proceeds of the Roha against the principle amount?

7. Whether the plaintiffs prove that term loan was covered by the RBI under the Scheme of capital participation?

8. What relief or the order?

4. On behalf of Plaintiffs Kalpana Harshan, Assistant Manager of the Plaintiff No. 1 has filed her evidence of examination in chief on affidavit. In the course of the evidence, she has also

produced documents which have been exhibited as P1 to P19. The defendants though have filed appearance, were not present and have not cross-examined the witness for the Plaintiff nor have they produced any evidence. It is based on the evidence on record that the issues as framed will have to be answered.

5. The first issue is whether this court has jurisdiction. The address of the Plaintiff is shown at Mumbai. In terms of Exh. P2, Clause 5, the balance due was to be paid at Mumbai office. Once that be the case, this court will have territorial jurisdiction as part of the cause of action has arisen within the jurisdiction of this court. Issue No. 1 therefore, will have to be answered in affirmative in favour of the Plaintiff.

6. The next issue is whether the Plaintiff have been able to prove that a sum of Rs,3,27,979.62 ps. was due and payable with interest at the rate of 14.5% p.a. The witness in the affidavit has averred that in the accounts maintained there is due and payable by defendant to Plaintiff no. 1 of Rs.3,27,797.62 ps. This is supported by particulars of claim as set out in the plaint. In so far as interest is concerned, Exh. P1 loan

agreement provides for the interest. In other words, Plaintiff has been able to establish that defendant is due and payable to the Plaintiff for the amount as claimed. Issue No. 2 therefore, will have to be answered in the affirmative.

. The only other issue that Plaintiff has to prove is issue No. 7. On behalf of the Plaintiff, learned counsel makes a statement that they are not covered by the R.B.I. Scheme of participation. In that light of the matter, the said issue has to be answered against the Plaintiff.

7. Issue Nos. 3 to 6, the burden was on the defendant. No evidence has been led on that count. Consequently, Issue Nos. 3 to 6 answered against defendant.

8. The counsel for the Plaintiff states that a proposal was put by the defendants which was accepted by Plaintiffs. That required payment of additional payment of Rs.50,000/- over and above sum of Rs.80,000/- which was already deposited in this court. As the defendants are not present, conditional decree can be passed in as much as the suit can be decreed in terms of the proposal put by the defendant and accepted by the Plaintiff.

. If the defendants pay to the Plaintiff, additional sum of Rs.50,000/- within four weeks from today apart from the sum of Rs.80,000/- already deposited, the claim of the Plaintiffs stand satisfied. Plaintiff No. 1 will be entitled to withdraw the sum of Rs.80,000/- deposited in this court along with accrued interest if any, on the Plaintiff No. 1 producing an authenticated copy of this order. On failure to pay additional amount of Rs.50,000/- within four weeks, there will be decree in terms of Prayer Clauses (a), (b) and (c). Cost to be paid by the defendants in favour of Plaintiff No. 1. C.C. expedited.

(F.I. REBELLO,J.)